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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,796	09/10/2001	Brian J. Brown	10010052 -1	8188

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
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Fort Collins, CO 80527-2400

EXAMINER

SALL, EL HADJI MALICK

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,796

Applicant(s)

BROWN ET AL.

Examiner

El Hadji M. Sall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. DETAILED ACTION

This action is responsive to the amendment files on February 28, 2005. Claims 1 - 36 are pending. Claims 1 - 36 represent system and method for distributing software.

2. Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 4-5, 7-12, 14-20 and 25-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Parthesarathy et al. (referred to as hereafter Pat) U.S. 6,353,926.

Pat teaches the invention as claimed including software update notification (see abstract).

As to claim 1, Pat teaches a method for distributing software, comprising:

querying a user as to the needs of the user (column 11, lines 11-12, Pat discloses querying the user to determine whether the user desires to load the new software update (i.e. loading the new software update is a "need" in that it allows incremental bug fixes, which the user "needs" for better machine performance));

receiving user responses to the query (column 11, lines 13-14, Pat discloses the installed software is performed when, in response to the querying step);

characterizing the use of the user based upon the user responses (column 11, lines 14-15, Pat discloses the user indicates a desire to load the new software update (i.e. by indicating a desire to load the new software, inherently "the use of the user is being characterized")); and

providing software programs that may be beneficial to the user based upon the characterization of the use (column 2, lines 17-21, Pat discloses when a new update is detected, the software channel delivers the software update to the user's computer (i.e. the software update of the user's computer is inherently "beneficial to the user" because updates include patches)).

As to claim 4, Pat teaches the method of claim 1, wherein querying a user comprises querying the user via a web site accessible on the Internet (column 1, lines

11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 5, Pat teaches method of claim 1, further comprising receiving user selections in response to the provided software programs (column 4, lines 16-19, Pat discloses the application program is a set of software that performs a task desired by the user, making use of computer resources made available through the operating system; see abstract).

As to claim 7, Pat teaches the method of claim 5, further comprising initiating downloading of the selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 8, Pat teaches the method of claim 7, wherein the software programs are downloaded from a storage medium read by the computing device (column 2, lines 63-65, Pat discloses in a distributed computing environment, program modules may be located in both local and remote memory storage devices).

As to claim 9, Pat teaches the method of claim 7, wherein the software programs are downloaded to the computing device from a remote source via a network (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 10, Pat teaches system for distributing software, comprising:
means for querying a user as to the needs of the user (column 11, lines 11-12, Pat discloses querying the user to determine whether the user desires to load the new software update (i.e. loading the new software update is a "need" in that it allows incremental bug fixes, which the user "needs" for better machine performance));

means for receiving user responses to the query (column 11, lines 13-14, Pat discloses the installed software is performed when, in response to the querying step);

means for characterizing the use of the user based upon the user responses (column 11, lines 14-15, Pat discloses the user indicates a desire to load the new software update (i.e. by indicating a desire to load the new software, inherently "the use of the user is being characterized")); and

means for providing software programs that may be beneficial to the user based upon the characterization of the use (column 2, lines 17-21, Pat discloses when a new update is detected, the software channel delivers the software update to the user's computer (i.e. the software update of the user's computer is inherently "beneficial to the user" because updates include patches)).

As to claim 11, Pat teaches the system of claim 10, wherein the means for querying the user comprise means for querying the user via a web site accessible on the Internet (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 12, Pat teaches the system of claim 10, further comprising means for receiving user selections in response to the provided software programs (column 4, lines 16-19, Pat discloses the application program is a set of software that performs a task desired by the user, making use of computer resources made available through the operating system; see abstract).

As to claim 14, Pat teaches the system of claim 12, further comprising means for initiating downloading of the selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 15, Pat teaches the system of claim 13, wherein the means for initiating downloading comprise means for initiating downloading from a storage medium read by the computing device (column 2, lines 63-65, Pat discloses in a distributed computing environment, program modules may be located in both local and remote memory storage devices).

As to claim 16, Pat teaches the system of claim 13, wherein the means for initiating downloading comprise means for initiating downloading from a remote source via a network (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 17, Pat teaches a software program stored on a computer-readable medium, comprising:

logic configured to query a user as to the needs of the user (column 11, lines 11-12, Pat discloses querying the user to determine whether the user desires to load the new software update (i.e. loading the new software update is a "need" in that it allows incremental bug fixes, which the user "needs" for better machine performance));

logic configured to receive user responses to the query (column 11, lines 13-14, Pat discloses the installed software is performed when, in response to the querying step);

logic configured to characterize the use of the user based upon the user responses (column 11, lines 14-15, Pat discloses the user indicates a desire to load the new software update (i.e. by indicating a desire to load the new software, inherently “the use of the user is being characterized”)); and

logic configured to provide software programs that may be beneficial to the user based upon the characterization of the use (column 2, lines 17-21, Pat discloses when a new update is detected, the software channel delivers the software update to the user's computer (i.e. the software update of the user's computer is inherently “beneficial to the user” because updates include patches)).

As to claim 18, Pat teaches the software program of claim 17, further comprising logic configured to receive user selections in response to the provided software programs (column 4, lines 16-19, Pat discloses the application program is a set of software that performs a task desired by the user, making use of computer resources made available through the operating system; see abstract).

As to claim 20, Pat teaches the software program of claim 17, further comprising logic configured to initiate downloading of the selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms

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or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 25, Pat teaches a method for distributing software, comprising:

querying a user as to what the users wants to accomplish (column 6, lines 15-20, Pat discloses the computer queries the user to determine if the user wants to load the new update now or later (i.e. determining if the user wants to load the new update now or later can be equated to "what the user wants to accomplish"))).

receiving responses from the user (column 11, lines 13-14, Pat discloses the installed software is performed when, in response to the querying step); and

providing software programs based upon the user responses (column 2, lines 17-21, Pat discloses when a new update is detected, the software channel delivers the software update to the user's computer; column 11, lines 13-15, Pat discloses the installed software is performed when, in response to the querying step, and the user indicates a desire to load the new software update (i.e. the new update is based on the user's desire that is inherently equivalent to "providing the software program based upon the user responses"))).

As to claim 26, Pat teaches the method of claim 25, wherein querying a user comprises querying the user via a web site accessible on the Internet (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading

it from remote server computers connected to the client computers through the Internet).

As to claim 27, Pat teaches the method of claim 25, further comprising initiating downloading of selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 28, Pat teaches the method of claim 25, wherein the software programs are downloaded to a computing device from a remote source via a network (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 29, Pat teaches a method for distributing software, comprising:
querying a user as to the needs of the user (column 11, lines 11-12, Pat discloses querying the user to determine whether the user desires to load the new software update (i.e. loading the new software update is a "need" in that it allows incremental bug fixes, which the user "needs" for better machine performance));

receiving responses from the user (column 11, lines 13-14, Pat discloses the installed software is performed when, in response to the querying step); and

suggesting software programs based upon the user responses (column 2, lines 16-21, Pat discloses the channel is updated periodically based on the schedule suggested by the channel. when a new update is detected, the software channel delivers the software update to the user's computer (i.e. the software update of the user's computer is inherently "beneficial to the user" because updates include patches, therefore when the new update is detected, it is inherent that there is a "suggestion of programs based upon the user responses"))).

As to claim 30, Pat teaches the method of claim 29, wherein querying a user comprises querying the user via a web site accessible on the Internet (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 31, Pat teaches the method of claim 29, further comprising initiating downloading of selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 32, Pat teaches the method of claim 29, wherein the software programs are downloaded to a computing device from a remote source via a network (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 33, Pat teaches a method for distributing software, comprising:
determining tasks a user wishes to accomplish from responses provided by the user (column 11, lines 11-14, Pat discloses querying the user to determine whether the user desires to load the new software update, and the installed software is performed when, in response to the querying step; column 6, lines 15-20, Pat discloses the computer queries the user to determine if the user wants to load the new update now or later (i.e. determining if the user wants to load the new update or later can be equated to "determining tasks a user wants to accomplish")); and

installing software programs based upon the determination (column 2, lines 17-21, Pat discloses when a new update is detected, the software channel delivers the software update to the user's computer; column 11, lines 11-14, Pat discloses the installed software is performed when, in response to the querying step).

As to claim 34, Pat teaches the method of claim 33, wherein the responses are received in reply to queries posed to the user via a web site accessible on the Internet

(column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 35, Pat teaches the method of claim 33, further comprising initiating downloading of selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 36, Pat teaches the method of claim 33, wherein the software programs are downloaded to a computing device from a remote source via a network (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

4. *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable Pat U.S. 6,353,926 in view of Bradford U.S. 6,678,679.

Pat teaches the invention substantially as claimed including software update notification (see abstract).

As to claim 2, Pat teaches the method of claim 1.

Pat fails to teach querying a user comprises posing at least one multiple choice question to the user.

However, Bradford teaches method and system for facilitating the refinement of data queries. Bradford teaches querying a user comprises posing at least one multiple choice question to the user (column 13, lines 43-45, Bradford discloses the word under consideration may be incorporated into a question that is directly asked of the

user; column 16, lines 52-53, Bradford discloses the user is presented with specific questions to refine the query).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Pat in view of Bradford to provide querying a user comprises posing at least one multiple choice question to the user. One would be motivated to do so to allow user feedback regarding relevancy of retrieved data (abstract).

6. Claims 6, 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pat U.S. 6,353,926 in view of Kroening U.S. 6,859,924.

Pat teaches the invention substantially as claimed including software update notification (see abstract).

As to claims 6, 13 and 19, Pat teaches the method, the system and the software program of claims 5, 12 and 18.

Pat fails to teach suggesting an alternative selection after receiving a user selection that identifies a software program the user already possesses.

However, Kroening teaches an alternative method of selecting software to download (column 7, line 51 to column 8, line 21).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Pat in view of Kroening to provide suggesting an alternative selection after receiving a user selection that identifies a software program the user

already possesses. One would be motivated to do so to allow the proper software update.

7. Claims 3 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable Pat U.S. 6,353,926 in view of Himmel et al. U.S. 6,742,052.

Pat teaches the invention substantially as claimed including software update notification (see abstract).

As to claim 3, Pat teaches the method of claim 1.

Pat fails to teach explicitly querying the user as to how the user plans to use a peripheral device.

However, Himmel teaches wireless system bus. Himmel teaches querying the user as to how the user plans to use a peripheral device (column 2, line 66 to column 3, line 2, Himmel discloses querying the user whether to accept and configure the peripheral device (i.e. by querying the user whether to accept, user is inherently being "queried as to "how the user plans to use a peripheral device").

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Pat in view of Himmel to provide querying the user as to how the user plans to use a peripheral device. One would be motivated to do so to allow the peripheral device to process data properly.

As to claim 21, Pat teaches the method for distributing software for a peripheral device, comprising:

querying a user as to what the users wants to accomplish (column 6, lines 15-20, Pat discloses the computer queries the user to determine if the user wants to load the new update now or later (i.e. determining if the user wants to load the new update now or later can be equated to "what the user wants to accomplish")).

receiving responses from the user (column 11, lines 13-14, Pat discloses the installed software is performed when, in response to the querying step);

providing software programs based upon the user responses (column 2, lines 17-21, Pat discloses when a new update is detected, the software channel delivers the software update to the user's computer; column 11, lines 13-15, Pat discloses the installed software is performed when, in response to the querying step, and the user indicates a desire to load the new software update (i.e. the new update is based on the user's desire that is inherently equivalent to "providing the software program based upon the user responses")).

Pat fails to teach explicitly querying a user as to what the peripheral device may be used for; and providing software programs for the peripheral device based upon the user responses.

However, Himmel teaches querying the user whether to accept, and providing software programs for the peripheral device based upon the user responses (column 2, line 66 to column 3, line 2, Himmel discloses querying the user whether to accept and

configure the peripheral device (i.e. by querying the user whether to accept, user is being "queried as to what peripheral device may be used for, and by configuring the peripheral device, "software programs are being provided or downloaded to the peripheral device").

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Pat in view of Himmel to provide querying a user as to what the peripheral device may be used for; and providing software programs for the peripheral device based upon the user responses. One would be motivated to do so to allow the peripheral device to process data properly.

As to claim 22, Pat teaches the method of claim 21, wherein querying a user comprises querying the user via a web site accessible on the Internet (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

As to claim 23, Pat teaches the method of claim 21, further comprising initiating downloading of selected software programs to a computing device of the user (column 1, lines 35-40, Pat discloses because different types of computer hardware and operating systems can connect to a common network, software, software distributed over the network can be made to work across platforms or intelligent so that only the correct version of platform-specific software is pushed down to the user).

As to claim 24, Pat teaches the method of claim 21, wherein the software programs are downloaded to the computing device from a remote source via a network (column 1, lines 11-14, Pat discloses more and more individuals are acquiring software by downloading it from remote server computers connected to the client computers through the Internet).

8. Response to Arguments

Applicant's arguments with respect to claims 3, 6, 13, 19 and 21-24 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant arguments with respect to claims 1-2, 4-5, 7-12, 14-18, 20 and 25-36, please see explanation as detailed in the above rejection.

9. Conclusion

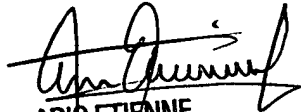
Any inquiry concerning this communication or earlier communications from the examiner should be directed to El Hadji M Sall whose telephone number is 571-272-4010. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4010.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

El Hadji Sall
Patent Examiner
Art Unit: 2157



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